

COPY

DEC 17 2010



MICHAEL K. JEANES, CLERK
S. MACK
DEPUTY CLERK

Terry Goddard
Attorney General
(Firm State Bar No. 14000)
Susan P. Segal
Assistant Attorney General
State Bar No. 006098
Carolyn R. Matthews
Assistant Attorney General
State Bar No. 013953
Office of the Attorney General
1275 West Washington Street
Phoenix, AZ 85007-2926
consumer@azag.gov

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.* TERRY
GODDARD, Attorney General,

Plaintiff,

vs.

COUNTRYWIDE FINANCIAL CORPORATION,
a Delaware corporation; COUNTRYWIDE HOME
LOANS, INC., a New York corporation; FULL
SPECTRUM LENDING, INC., a California
corporation; BANK OF AMERICA
CORPORATION, a Delaware corporation; BANK
OF AMERICA, NATIONAL ASSOCIATION, a
national bank; BAC HOME LOANS SERVICING,
LP, a foreign limited partnership; RECONTRUST
COMPANY, N.A., a wholly-owned subsidiary of
Bank of America, N.A.; and BLACK
CORPORATIONS 1-10,

Defendants.

CV2010-033580
Case No.:

COMPLAINT

**(VIOLATIONS OF CONSENT
JUDGMENT AND VIOLATIONS
OF ARIZONA CONSUMER
FRAUD ACT)**

Plaintiff, the State of Arizona by its Attorney General Terry Goddard ("State" or
"Attorney General"), for its complaint, hereby alleges as follows in support of its claims that

1 the Defendants have violated Arizona law in their servicing of residential home mortgage loans.
2 First, Defendants have failed to honor the commitments made in the Consent Judgment
3 (“Consent Judgment”) entered on March 13, 2009, which resolved allegations that Countrywide
4 engaged in consumer fraud in its mortgage lending practices. *State of Arizona v. Countrywide*
5 *Financial Corporation, Countrywide Home Loans, Inc., and Full Spectrum Lending, Inc.*
6 (Maricopa County Superior Court, Cause No. CV2009-006468). See Consent Judgment,
7 **Exhibit “A.”** More broadly, Defendants have continued to engage in widespread consumer
8 fraud by misrepresenting to Arizona consumers whether they were eligible for modifications of
9 their mortgage loans, when Bank of America would make a decision on their modification
10 requests, whether Bank of America had approved their modification requests, why Bank of
11 America declined their modification requests, and whether and when Bank of America would
12 foreclose upon their homes. Bank of America’s failure to offer loan modifications in the time
13 and manner promised and its deception of consumers about the status, timing, impact, and
14 outcome of their loan modification requests violate the Arizona Consumer Fraud Act, A.R.S.
15 §§ 44-1521, et seq. (“Consumer Fraud Act”).

16 JURISDICTION AND VENUE

17 1. This Court has jurisdiction to consider this Complaint pursuant to the Consent
18 Judgment ¶¶ III.2.3, III.8.4, III.10.3, III.10.4, and the Consumer Fraud Act, including A.R.S.
19 §§ 44-1521 and -1532, and to order injunctive relief, restitution, civil penalties, costs of
20 investigation, and attorney’s fees to prevent the practices alleged in this Complaint and to
21 remedy the consequences of those practices.

22 2. Venue is appropriate in Maricopa County pursuant to A.R.S. § 12-401.

23 PARTIES

24 3. Plaintiff is the State of Arizona, *ex rel.* Terry Goddard, the Attorney General of
25 Arizona, who is authorized to bring this action under the Consent Judgment and the Consumer
26 Fraud Act, including A.R.S. §§ 44-1521 and -1532.

1 4. Defendant Countrywide Financial Corporation ("CFC") is a Delaware
2 corporation and a thrift holding company doing business in Arizona.

3 5. Defendant Countrywide Home Loans, Inc. is a New York corporation licensed to
4 do business in Arizona, is a wholly owned subsidiary of CFC, and is or was a licensed
5 mortgage banking organization.

6 6. Defendant Full Spectrum Lending, Inc. is or was a California corporation, is or
7 was a wholly-owned subsidiary of CFC, and is or was a licensed mortgage banking
8 organization.

9 7. Defendant Bank of America, National Association ("N.A.") is a national banking
10 association with its principal place of business located in Charlotte, North Carolina. At all
11 times material hereto, Bank of America, N.A. was a corporation registered to do and doing
12 business in the State of Arizona.

13 8. Defendant Bank of America Corporation is a Delaware corporation with its
14 principal place of business located in Charlotte, North Carolina. Bank of America Corporation
15 is a holding company and the parent company for Defendants CFC and Bank of America, N.A.

16 9. On July 1, 2008, Defendant Bank of America Corporation announced that it had
17 completed its purchase of CFC, including Countrywide Home Loans, Inc., Full Spectrum
18 Lending, Inc., and Countrywide Home Loans Servicing, LP.

19 10. Defendant BAC Home Loans Servicing, LP ("BAC") is a limited partnership
20 with its principal place of business located in Austin, Texas and is authorized to do business in
21 Arizona. BAC is a subsidiary of Bank of America, N.A.

22 11. Defendant ReconTrust Company, N.A. ("ReconTrust") is a non-deposit trust
23 company and a wholly-owned subsidiary of Bank of America, N.A. that services defaulted
24 mortgages in a number of states, including Arizona. At all times material hereto, ReconTrust's
25 principal place of business was located in Thousand Oaks, California.

26 12. Upon its acquisition of CFC, Bank of America, N.A. through BAC assumed the

1 responsibility for servicing the CFC loans covered by the Consent Judgment and the
2 responsibility for compliance therewith.

3 13. Bank of America, N.A., through BAC, also services loans originated by Bank of
4 America, N.A., or its affiliates or subsidiaries, as well as loans serviced under contract for other
5 institutions.

6 14. Defendants Black Corporations 1 through 10 are fictitious names for affiliates or
7 subsidiaries of one or more of the other named Defendants, whose names are unknown to the
8 State at this time, and who may have liability for some or all of the conduct alleged herein.
9 Defendants Black Corporations 1 through 10 may be corporations, partnerships, limited
10 partnerships, or any other form of legal entity. (Defendants Bank of America Corporation,
11 Bank of America, N.A., BAC, ReconTrust, and Black Corporations 1 through 10 are referred to
12 collectively hereinafter as "Bank of America" or "the Bank.")

13 BACKGROUND

14 15. On March 13, 2009, the State filed the Consent Judgment in the Consent
15 Judgment proceeding with CFC, Countrywide Home Loans, Inc., and Full Spectrum Lending,
16 Inc. (collectively, "Countrywide"). The Consent Judgment resolved the State's allegations
17 under the Arizona Consumer Fraud Act that Countrywide had engaged in widespread consumer
18 fraud in the origination, marketing, and servicing of mortgage loans in Arizona.

19 16. The Consent Judgment provided for payments to (a) Arizona Countrywide
20 borrowers who were subject to foreclosure but agreed to voluntarily surrender their homes
21 before foreclosure (referred to as the relocation assistance program), and (b) a \$2,049,149 fund,
22 which, pursuant to the Consent Judgment, the Attorney General has been using to fund housing
23 counselors and other foreclosure prevention efforts (referred to as the foreclosure relief
24 program).

25 17. The Consent Judgment also included a commitment, separately valued by Bank
26

1 of America at roughly \$8.4 billion nationally,¹ to provide loan modifications in a program that
2 Bank of America subsequently named the "National Homeownership Retention Program"
3 ("NHRP"). Bank of America estimated that NHRP would reach approximately 13,000 eligible
4 borrowers in Arizona.

5 18. Loan modifications, by which mortgage servicers² change the terms of borrowers'
6 mortgage terms, have been a cornerstone of public and private efforts to preserve home
7 ownership in the recent financial crisis. Through the modification process, servicers, like Bank
8 of America, reduce borrowers' interest rates, extend their loan terms, and/or forgive or forbear
9 principal in order to reach a monthly mortgage payment that borrowers can afford.

10 19. Although the mortgage notes' owners (or investors) do not receive the payment
11 stream promised in the original loan documents, loan modifications can prevent a greater loss
12 by preserving some level of payments from the borrowers and avoiding foreclosures.

13 20. Over the twenty-one months since the Consent Judgment was entered and the
14 more than two years since Bank of America took over servicing the Countrywide loans, Bank
15 of America has repeatedly violated the provisions of the Consent Judgment related to loan
16 modifications. Instead of providing the relief to which struggling borrowers are entitled—
17 timely consideration for loan modifications that would make their mortgages affordable and a
18 stop on foreclosure proceedings while they apply for and are evaluated for assistance—Bank of
19 America has subjected Arizona consumers to the following conduct:

- 20 a. Initiated foreclosure proceedings or moved eligible borrowers toward
21 foreclosure while their requests for loan modifications are pending, despite the
22 Bank's commitment to halt foreclosures during that time;

24 ¹ The Consent Judgment was the result of a multistate investigation. Similar consent
25 judgments were entered in other states at about the same time.

26 ² Mortgage servicers are the entities to whom homeowners make their mortgage payments.
They collect payments from homeowners, forward payments to mortgage owners, and perform
related services pursuant to agreements between mortgage owner and servicer.

- b. On information and belief, failed to make decisions on modifications, on average, within 60 days, leaving eligible borrowers in limbo for months or even more than a year;
- c. Failed to use its best efforts to secure investor approval of potential modifications; and
- d. Failed to timely and sufficiently respond to complaints regarding its performance under the Consent Judgment.

Together and separately, these failures constitute material breaches of the Consent Judgment.

21. For these reasons, on April 9, 2010, the Attorney General's Office notified Bank of America that it considered the Bank to be in breach of the Consent Judgment. Bank of America denied any violations of the Consent Judgment and has not informed the Attorney General's Office of any change in its practices as a result of the Attorney General's notification of breach.

22. In addition, Bank of America has misled, and continues to mislead, Arizona consumers—both those within and outside of the reach of the Consent Judgment—about its loss mitigation³ efforts.

23. According to hundreds of complaints filed with and investigated by the Attorney General's Office, Bank of America repeatedly has deceived homeowners about the loan modification process. Bank of America's deceptions include, but are not limited to, the following:

- a. Consumers must be delinquent on their mortgage payments in order to be considered for loan modifications, even though delinquency is not a condition

³ "Loss mitigation" includes all alternatives to foreclosure, including loan modifications, forbearance of payments, deeds in lieu of foreclosure (by which a borrower surrenders ownership of the property without a foreclosure action), and short sales (in which the servicer and investor typically agree to accept a sale that does not cover the entire principal balance owed as satisfaction of the borrower's obligation).

- 1 of federal programs or Bank of America's own loan modification programs;
- 2 b. Bank of America would make decisions on modifications within a specified
- 3 time frame, although the Bank kept many consumers waiting months longer
- 4 than promised;
- 5 c. Bank of America would not foreclose upon consumers' homes while
- 6 modification requests were pending or while homeowners were making trial
- 7 modification payments;
- 8 d. Bank of America had approved a loan modification, when it had not;
- 9 e. Bank of America would convert consumers to permanent modifications if and
- 10 when they made the payments required by trial modification agreements,
- 11 although many consumers who successfully completed their trial periods have
- 12 not received permanent modifications; and
- 13 f. Bank of America would make decisions on short sales⁴ within a specified
- 14 period of time, although Bank of America repeatedly kept consumers waiting
- 15 well beyond the promised time.

16 24. As a result of Bank of America's misrepresentations, many Arizona consumers

17 stopped making mortgage payments in a perilous attempt to qualify for help. Others waited for

18 months for—or never received—answers on their modification requests, all the while fearing

19 that they would lose their homes; many actually lost their homes. Some consumers were

20 misled to continue making payments in the belief that they would be able to obtain

21 _____

22 ⁴ As noted in the previous footnote, a short sale is a sale of real property in which the sales

23 price is insufficient to pay the loan encumbering the property and the seller is unable to pay the

24 difference. See A.R.S. § 32-2130 (eff. 1/1/11). Under the federal Home Affordable Foreclosure

25 Alternatives ("HAFA") short sale program (a MHA Program), for example, Bank of America

26 agrees under certain circumstances that the borrower may list and sell the property with the

understanding that the Bank will accept less than the amount due on the mortgage and will

release the borrower from any further responsibility for the outstanding debt. See

<http://homeloanhelp.bankofamerica.com/en/home-affordable-foreclosure.html> (last visited Nov.

8, 2010).

1 modifications and keep their homes. Had they known they would lose their homes despite
2 making payments, some consumers might have sought short sales or other foreclosure
3 alternatives or simply allowed their homes to be foreclosed, saving the money from the
4 additional payments for other necessary expenses. Other consumers lost willing buyers who
5 could have mitigated their own (and Bank of America's) financial losses by stepping in to
6 purchase their homes.

7 25. Bank of America's conduct is not limited to a few consumers. Assessments
8 conducted by the federal government demonstrate that Arizona consumers' experiences reflect
9 a pervasive, nationwide pattern and practice of conduct:

- 10 a. Bank of America ranks last in virtually every homeowner experience metric
11 monitored by the Department of Treasury in its monthly Servicer Performance
12 Report issued under the federal Making Home Affordable ("MHA") Program,⁵
13 which is available at:
14 <http://www.financialstability.gov/docs/Sept%20MHA%20Public%202010.pdf>.
15 According to the October 2010 report, which reflects data through September
16 2010, Bank of America has the worst speed to answer homeowner calls and the
17 worst call abandon rate, indicating that call centers are unable to handle the
18 volume of consumer calls. In addition, Bank of America has a higher than
19 average complaint rate to a federal hotline and the worst time for resolving third-
20 party complaints (e.g., from housing counselors) to the federal government. *Id.*
21 b. The Treasury Department recently cited Bank of America for failing to comply

22
23
24 ⁵ The MHA Program was introduced in February 2009 as part of the federal Financial
25 Stability Plan. Its goal is to stabilize the housing market and help struggling homeowners avoid
26 foreclosure. The MHA program encompasses several different programs through which
participating servicers agree to offer eligible homeowners various loss mitigation alternatives.
Bank of America is a participating servicer in the MHA program.

1 with requirements of the HAMP program⁶ and directed the Bank to make certain
2 undisclosed changes in its procedures. See
3 [http://www.nationalmortgagenews.com/nmn_features/boa-jpm-wells-told-](http://www.nationalmortgagenews.com/nmn_features/boa-jpm-wells-told-comply-1021591-1.html)
4 [comply-1021591-1.html](http://www.nationalmortgagenews.com/nmn_features/boa-jpm-wells-told-comply-1021591-1.html) (Oct. 8, 2010).

5 **VIOLATIONS OF THE CONSENT JUDGMENT**

6 **Bank of America Has Violated the Consent Judgment by Proceeding with Foreclosures** 7 **While Modification Requests Are Pending.**

8 26. The Consent Judgment entered into between Countrywide and the State requires
9 Bank of America to offer loan modifications to “Eligible Borrowers” in “Qualifying
10 Mortgages.” An Eligible Borrower is a borrower with a first mortgage payment due on or
11 before December 31, 2007, secured by an owner-occupied 1-to-4-unit residential property, and
12 serviced by a Countrywide servicer or its affiliate. Consent Judgment ¶ III.4.1, attached as
13 **Exhibit “A.”**

14 27. A Qualifying Mortgage is defined in the Consent Judgment as a Subprime
15 Mortgage or Pay Option Adjustable Rate Mortgage (“ARM”) where the Eligible Borrower is
16 either “Delinquent” or “Seriously Delinquent”⁷ and the ratio between the value of the mortgage
17 and the value of the home (“LTV”) is 75% or more. Consent Judgment ¶ III.4.2.

18 28. The Consent Judgment prohibits Bank of America from initiating or advancing a
19 foreclosure while an Eligible Borrower is being evaluated for a loan modification. Consent
20 Judgment ¶ III.4.6(a).

21
22 ⁶ “HAMP” is an acronym for Home Affordable Modification Program, one of the federal
23 programs under the MHA Program. HAMP provides eligible homeowners the opportunity to
24 modify the terms of their mortgages so that they may become and remain current on their
25 mortgage payments.

26 ⁷ A Seriously Delinquent Borrower is defined in the Consent Judgment as one who is 60
days or more behind on his or her payments. A Delinquent Borrower is one who is Seriously
Delinquent or subject to an imminent reset or recast and, as a result, likely to become Seriously
Delinquent on or before June 30, 2012. Consent Judgment ¶ III.1.2.

1 29. Bank of America has initiated or advanced foreclosures of Eligible Borrowers
2 while their modification requests are pending.

3 **Bank of America Has Violated the Consent Judgment by Making Homeowners Wait for**
4 **Six Months or More than a Year for Decisions on their Modification Requests.**

5 30. The Consent Judgment requires Bank of America to make decisions on
6 modification requests within 60 days, on average, after Eligible Borrowers provide complete
7 applications to Bank of America. Consent Judgment ¶ III.4.9.

8 31. In the cases described below, and in many other cases reviewed by the Attorney
9 General's Office, Eligible Borrowers waited for more than 60 days for decisions on their loan
10 modification requests.

11 32. These repeated, long delays are inconsistent with Bank of America's obligation to
12 make timely decisions on modification requests.

13 33. On information and belief, including the number of complaints the State has
14 received of delay of considerably more than 60 days, the State alleges that Bank of America has
15 violated this provision of the Consent Judgment.

16 **Bank of America Has Failed to Timely and Sufficiently Respond to the Attorney**
17 **General's Complaints as Required by the Consent Judgment.**

18 34. The Consent Judgment requires Bank of America to appoint a compliance
19 monitor to review and respond to complaints from the Attorney General, as well as from
20 individual borrowers. Consent Judgment ¶ 8.4.

21 35. In an effort to resolve potential performance issues and secure relief for Arizona
22 consumers, the Attorney General's Office routinely escalates consumer complaints to Bank of
23 America's appointed compliance monitor for review and response.

24 36. The Attorney General's Office has had to repeat its requests for responses to
25 consumer complaints numerous times. For example, on August 25, 2009, the Attorney
26 General's Office requested for a second time that Bank of America respond to 10 consumer

1 complaints, including two that were two months past an extension to reply requested by Bank
2 of America. Several of the complaints had been submitted to Bank of America more than three
3 months before. Other letters noting the Bank's failure to respond to multiple complaints were
4 sent on October 9, 2009; March 24, 2010; July 12, 2010; September 16, 2010; September 24,
5 2010; and October 27, 2010. On March 24, 2010, the Office sent the Bank a list of 46
6 consumer complaints for which it was awaiting a response, including several for which the
7 Office was asking for a third, fourth or fifth time. *See* Attorney General letters, **Exhibit "B"**
8 (customer names redacted).

9 37. In addition, some of the Bank's responses have been patently insufficient, as they
10 either fail to answer the allegations of the complaint, provide only partial information or
11 response, or provide nothing more than a form letter unrelated to the issues alleged. *See* Bank
12 of America sample responses, **Exhibit "C"** (customer names redacted).

13 38. Bank of America's delayed and insufficient responses, as described herein, do not
14 satisfy Bank of America's obligation under the Consent Judgment to respond to consumer
15 complaints.

16 **Bank of America has Failed to Make Best Efforts to Secure Investor Approval for**
17 **Modifications, as Required by the Consent Judgment.**

18 39. In the Consent Judgment, Bank of America represented that it had, or reasonably
19 expected to obtain, authority to offer NHRP modifications for "a substantial majority" of
20 Qualifying Mortgages. Consent Judgment ¶ III.4.7(e). In those instances where Bank of
21 America did not have the necessary authority, it committed to use its "best efforts" to obtain
22 investor authorization. *Id.*

23 40. Bank of America has informed some Eligible Borrowers that they were denied
24 modifications because the investor would not consent to the changed terms.

25 41. On information and belief, Bank of America has not made its best efforts to
26 secure investor approval in such cases.

1 42. One third party allegedly approached by Bank of America for authorization
2 received only a form email announcing the settlement and the National Homeownership
3 Retention Program. The third party asked questions about the scope and impact of the
4 modification program but, despite repeated requests for follow up, never received more
5 information from Bank of America or a request for delegated authority to offer NHRP
6 modifications. The third party also notes that Bank of America has made numerous requests
7 that it approve individual modifications but that many of those modifications could not be
8 approved because Bank of America did not provide the necessary documentation to consider
9 them.

10 43. In more than one instance, Bank of America refused to approve loan modification
11 requests on the ground that the investor would not approve them when in fact Bank of America
12 had received delegated authority to make such decisions.

13 44. The Bank's purported reliance on investor refusal to approve loan modification
14 requests where no such approval was needed violated both Bank of America's obligation under
15 the Consent Judgment to use its best efforts to obtain investor authorization, as well as its
16 obligation to offer modifications to Eligible Borrowers who met the qualifications for a NHRP
17 modification. Consent Judgment ¶ III.4.

18 **Sample Consumer Complaints: Consent Judgment.**

19 45. The consumer complaints summarized below represent a small sample of the
20 complaints received and investigated by the Attorney General's Office, but demonstrate the
21 range of issues cited by consumers and alleged in this Complaint.

22 46. On information and belief, each of the consumers listed in the section below is an
23 Eligible Borrower in a Qualifying Mortgage as defined by the Consent Judgment.

24 47. Although their complaints are included in this section of the Complaint, these
25 consumers' experiences also support and are also alleged in connection with the claim under
26 the Consumer Fraud Act.

1 **D.J.T. (CIC # 09-15109)⁸**

2 48. A Chino Valley family in a Qualifying Mortgage applied for a loan modification
3 for their Countrywide mortgage in May 2008 because the payments on their payment option
4 ARM were about to increase. They called Countrywide every month to check on their
5 modification request, withdrawing funds from their 401(k) to keep up with their mortgage
6 payments.

7 49. In January 2009, Countrywide told them their modification would be approved
8 and they would receive a modification agreement by mail. Instead, Countrywide sent them a
9 Notice of Intent to Accelerate.

10 50. The form Notice of Intent to Accelerate used by both Countrywide and BOA
11 informs borrowers they are in serious default, requires them to cure the default in full by a date
12 certain, and promises that if the default is not fully cured by that date, "the mortgage payments
13 **will be accelerated** with the full amount remaining accelerated and becoming due and payable
14 in full, and foreclosure proceedings will be initiated at that time." See Notice of Intent to
15 Accelerate, **Exhibit "D."**

16 51. When the homeowners called Countrywide about the Notice of Intent to
17 Accelerate, they were told not to worry because they were approved for a modification.
18 Subsequently, they received both an unsolicited interest rate reduction and a letter stating that
19 their modification request had been denied.

20 52. Countrywide again promised the homeowners that the loan was not in foreclosure
21 and instructed them to make the modified payment. Although they were able to make the first
22

23 ⁸ To protect the consumers' privacy, the State includes only the initials and the CIC
24 number for each complainant. The CIC number is a unique identifier assigned by the Office of
25 the Attorney General to each consumer complaint it receives, and Bank of America is aware of
26 the consumer name and address associated with each CIC number identified herein. In addition,
in all exhibits and other evidence filed in this case, the State will similarly redact consumer
identifying information.

1 modified payment, the second modified payment was rejected because the loan was in
2 foreclosure.

3 53. In April 2009, at Bank of America's request, the family again faxed all of their
4 financial information—twice. When they spoke to a Bank representative, they were again
5 promised that they had been approved for a modification.

6 54. Two weeks later, Bank of America called the homeowners asking what they
7 wanted to do about their home. The homeowners explained to the Bank representative that they
8 were in a modification, and the representative told them their modification had been denied two
9 weeks earlier and a sale date was set for June 30.

10 55. The Bank representative told the homeowners to fax in their information again,
11 which they did.

12 56. In June, Bank of America's automated response system indicated, when the
13 homeowners called, that collection activity had been suspended and their loan had been
14 forwarded to a negotiator; the system advised them not to contact the negotiator as it might
15 delay the process.

16 57. Then in July, the Bank sent the homeowners a letter that discussed assistance for
17 tenants in foreclosed properties. When they called Bank of America about it, the Bank
18 representative told them that their home had been sold on June 30. When they asked about the
19 modification, the representative said it was still in review.

20 58. On August 4, five (5) days before the homeowners' deadline to vacate their home
21 and after they had signed a rental contract on a new residence, Bank of America contacted the
22 homeowners to discuss their loan modification request. On August 5, Bank of America sent the
23 homeowners a letter denying their workout request.

24 **M.D. (CIC # 09-26422)**

25 59. In or about September 2008, Bank of America sent this Eligible Borrower in
26 Glendale solicitations indicating that she might be eligible for a loan modification through the

1 modification program set up through the Consent Judgment.

2 60. The homeowner applied for and received a modification offer and returned a
3 signed copy of the new loan contract. After making her payments on the modified loan for 9
4 months, she called Bank of America with a question about her account, and the representative
5 told her that her loan modification application had been denied six months before.

6 61. After the Bank sent the homeowner a Notice of Trustee's Sale in January 2010,
7 she moved out, believing her home would be sold.

8 62. Bank of America subsequently sent the homeowner a letter, this time indicating
9 that her trial modification period had recently expired and asking her to submit documents to be
10 considered for a permanent modification.

11 63. Bank of America had initiated a foreclosure action while the homeowner was on
12 a modification plan and, by its own admission, while it was evaluating her request for a
13 permanent modification.

14 64. After sending the Notice of Trustee's Sale, Bank of America continued to send
15 correspondence to the homeowner regarding a possible loan modification, including
16 solicitations to re-apply, as well as a modification denial letter.

17 65. The homeowner ultimately gave up on the modification process.

18 **B.L.S. (CIC # 09-14310)**

19 66. In 2009, a United States Air Force veteran and his wife, who were Eligible
20 Borrowers under the Consent Judgment, struggled to meet their mortgage obligations on their
21 Tucson home after the interest rate on their Subprime Hybrid ARM adjusted upwards.

22 67. Bank of America sent the homeowners three loan modification offers, one right
23 after the other.

24 68. They accepted the second offer in March 2009 and a Bank representative told
25 them it was approved.

26 69. However, when they later called Bank of America, they were told their request

1 was denied due to lack of documentation, even though they had submitted all required
2 documents.

3 70. Bank representatives told them that the multiple offers had created confusion and
4 assured them that the records would be fixed and their modification approved within 30 to 90
5 days.

6 71. The homeowners called and received verification from Bank representatives that
7 all of their documents were received and appropriately logged. They made their three trial
8 modification payments from May through July 2009.

9 72. After the third payment, they called to check their status. A Bank representative
10 advised them that their request had been denied and their file closed. The Bank offered
11 different reasons for the denial on different calls: their documents were missing, their
12 documents did not reach the right department, and they did not qualify for a modification.

13 73. A few weeks after the denial, the homeowners re-applied for a modification. A
14 Bank representative told them that their loan modification review would not resume until after
15 February 2010 because the investor, Bank of New York, did not want to give them a loan
16 modification until they showed that they could make forbearance payments for six months.

17 74. On information and belief, Bank of New York was the trustee for the investor and
18 had no authority to deny the modification. Bank of America had fully delegated authority to
19 decide whether and on what terms to offer a loan modification or forbearance.

20 75. On March 26, 2010, Bank of America asked the homeowners to provide financial
21 information within one week.

22 76. The homeowners were unable to get the requested documents from their
23 accountant on such a short turn-around time, and, as a consequence, Bank of America cancelled
24 their modification.

25 77. The homeowners reapplied for a modification in April 2010. Since then, Bank of
26 America has asked them to re-send their information at least five more times.

1 78. It has been over 20 months since the homeowners accepted the Bank's
2 modification offer, and they are still waiting for a permanent modification. In a letter dated
3 November 9, 2010, Bank of America confirmed that the homeowners are still under review for
4 a modification, and once again asked them to provide their updated financial information.

5 **VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT**

6 **Bank of America's Loss Mitigation Practices Also Violate the Arizona Consumer Fraud**
7 **Act.**

8 79. Bank of America has engaged, and continues to engage, in a pattern and practice
9 of misleading consumers about the potential or process for securing modifications of their
10 mortgages and other loss mitigation options and about the potential for being foreclosed upon
11 while they are in loss mitigation or once they have obtained modifications.

12 80. Bank of America has made representations regarding the time frame within which
13 it will make decisions on modifications and about the impact of the modification process on
14 foreclosure proceedings. The Bank has made these representations both orally to individual
15 consumers and in its public statements and materials:

- 16 a. Bank of America's website indicates that it will "typically" take 30 to 45
17 calendar days from the receipt of a consumer's documents to make a decision
18 on a loan modification request. See
19 <http://homeloanhelp.bankofamerica.com/en/fha-home-affordable->
20 [modification.html](http://homeloanhelp.bankofamerica.com/en/fha-home-affordable-modification.html) (Next Step: Documents) (visited May 27, 2010; last visited
21 Oct. 28, 2010), attached as **Exhibit "E."** Although Bank of America does not
22 guarantee that every consumer will receive an answer within that time frame,
23 Bank of America's statements, especially when considered with its other
24 representations, create the impression that modification decisions will not drag
25 on for six months or longer.

- 26 b. Bank of America also promises on its website that: "You can expect to hear

1 back from us within 10 business days from when we receive all your required
2 documents. The purpose of contacting you is to confirm receipt of your
3 information, let you know how the evaluation process works and how long it
4 takes. . . .” [http://homeloanhelp.bankofamerica.com/en/fha-home-affordable-](http://homeloanhelp.bankofamerica.com/en/fha-home-affordable-modification.html)
5 [modification.html](http://homeloanhelp.bankofamerica.com/en/fha-home-affordable-modification.html) (Next Step: Documents) (visited May 27, 2010; last visited
6 Oct. 28, 2010), **Exhibit “E.”**

7 c. Bank of America representatives have told consumers by telephone over and
8 over again that their modification reviews would be complete within a
9 particular period of time, typically 30, 60, or 90 days.

10 81. Bank of America has imposed delay on many consumers far in excess of the
11 times it promised it would take to make a decision on their loan modification requests.

12 82. Bank of America blames most of the delays in processing loan modification
13 requests on customer failure to provide the required documentation.

14 83. Yet Bank of America rarely sends consumers written notification that documents
15 are missing.

16 84. Bank of America frequently even fails to notify consumers orally that documents
17 are missing.

18 85. Bank of America also represents publicly, and federal rules require, that
19 consumers need not be delinquent to be eligible for a modification.

20 a. Bank of America’s website notes: “If you’ve suffered a hardship that is
21 affecting your ability to make your mortgage payments or have already
22 missed a payment, you may be able to receive a more affordable mortgage
23 payment under the Home Affordable Modification Program.”

24 [http://homeloanhelp.bankofamerica.com/en/home-affordable-](http://homeloanhelp.bankofamerica.com/en/home-affordable-modification.html)
25 [modification.html](http://homeloanhelp.bankofamerica.com/en/home-affordable-modification.html) (visited May 27, 2010; last visited October 28, 2010),

26 **Exhibit “F.”** *See also* Treasury Department’s MHA Handbook, which can

1 be found at:

2 https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbo
3 [ok_20.pdf](https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbo), at 19 (Sept. 22, 2010) (“A loan is eligible for HAMP if the servicer
4 verifies that all of the following criteria are met: . . . The mortgage loan is
5 delinquent or default is reasonably foreseeable.”), **Exhibit “G.”**

6 86. Yet Bank of America representatives have told consumers that they must miss
7 payments in order to be considered for loan modifications.

8 87. In addition, on its website, among other places, and orally, Bank of America
9 assures consumers that it will not foreclose while they are participating in a modification plan
10 or awaiting a decision on a loan modification request.

11 88. On Bank of America’s website, for example, consumers are taken through
12 “Frequently Asked Questions,” which assure them that their homes will not be sold while they
13 are awaiting a decision on their modification request or on a modification plan:

14 I want to try to get a home loan modification under the Making
15 Home Affordable program, but I’m afraid that my lender will go
16 ahead with the foreclosure while I’m trying to make it happen. Can
17 I get more time to explore this option?

18 Yes. While we review your eligibility for the program, your loan
19 will not go to foreclosure sale. When you enter a trial plan under the
20 program, your loan will not be referred to foreclosure, and any
21 pending foreclosure proceeding will not go to sale.

22 See <http://homeloanhelp.bankofamerica.com/en/frequently-asked->

23 [questions.html?documentstate=Foreclosure](http://homeloanhelp.bankofamerica.com/en/frequently-asked-) (visited May 27, 2010); **Exhibit “H”**;

24 <http://homeloanhelp.bankofamerica.com/en/foreclosure.html> (last visited Oct. 28, 2010),

25 **Exhibit “I”**; Help for America’s Homeowners, *Supplemental Directive 10-02, Home*

26 *Affordable Modification Program – Borrower Outreach and Communication* at 3, 5-7 (Mar. 24,

1 2010), available at:

2 https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd1002.pdf, **Exhibit "J."**

3 89. Despite such assurances, Bank of America has advanced or completed
4 foreclosures while homeowners are participating in modification plans or awaiting decision on
5 loan modification requests.

6 90. Bank of America has told consumers who call after receiving a foreclosure-
7 related communication that they should ignore the notice; their homes will not be sold.

8 91. In several cases, despite these representations and the fact that the consumer was
9 either awaiting a decision or on a modification plan, Bank of America sold the consumer's
10 home anyway.

11 92. In other cases, Bank of America assessed foreclosure fees, even though the
12 foreclosure process should have never started or proceeded.

13 93. In other cases, Bank of America represented to consumers that if they were
14 approved for trial modifications, made each of their trial payments on time, and submitted
15 required paperwork, they would receive permanent modifications.

16 94. Yet after numerous consumers paid the required three—or often more—trial
17 payments, Bank of America did not place them in permanent modifications. At least one
18 consumer remained in a trial modification for a year.

19 95. Other consumers received foreclosure notices or were foreclosed upon while
20 paying on trial plans or were denied permanent modifications for reasons that, on information
21 and belief, were unjustified.

22 96. Finally, some consumers made monthly payments on trial plans that Bank of
23 America subsequently denied had received trial plans.

24 97. Also according to the Department of Treasury, Bank of America, at 27%, has the
25 second lowest rate of converting borrowers from temporary trial modifications to permanent
26 modifications (PNC Mortgage, at 24%, has the lowest rate). It also has, by far, the highest

1 number of "aged trials," or trial modifications that have been pending for more than six months.
2 (Bank of America's roughly 32,000 aged trials are more than four times that of its nearest
3 single competitor, JP Morgan Chase, at fewer than 8,000 aged trials.)

4 98. Bank of America has assured some consumers that their loan modifications have
5 been approved, but then failed to provide the paperwork to conclude the modifications.

6 99. In other cases, Bank of America promised the homeowner that a modification
7 was approved and then later denied the modification.

8 100. In addition, Bank of America fails to timely, or reasonably, respond to short sale
9 offers.

10 101. On its website, Bank of America represents that once a short sale offer is
11 received, "[Bank of America will] get back to you with a decision on the offer within 10
12 business days." <http://homeloanhelp.bankofamerica.com/en/home-affordable-foreclosure.html>
13 (Is it Right for Me, Step 4) (visited May 27, 2010; last visited Oct. 28, 2010), **Exhibit "K."**

14 102. Bank of America represents that it will accept short sale offers consistent with the
15 fair market value of the home. *See, e.g.,* [http://homeloanhelp.bankofamerica.com/en/short-](http://homeloanhelp.bankofamerica.com/en/short-sale.html)
16 [sale.html](http://homeloanhelp.bankofamerica.com/en/short-sale.html) (Program at a Glance, Step 4) (visited May 27, 2010; last visited November 11, 2010)
17 ("We will determine the fair market value of your home by ordering a valuation and reviewing
18 the prices of recently sold homes comparable to yours in your local market. Based on our
19 findings, we may present you with a counter offer if the original offer is not in alignment with
20 the fair market value of your home."), **Exhibit "L."**

21 103. Yet Bank of America did not respond to many short sale offers for months. This
22 has caused consumers (and Bank of America) to lose potential buyers, who could not brook the
23 long delay or uncertainty.

24 104. In addition, Bank of America did not accept reasonable short sale offers that met
25 or exceeded the asking price and fair market or appraised value.
26

Bank of America Misled Consumers by Telling Them That Their Modifications Were Declined or Delayed Due to Investor Actions (or Inaction) When No Investor Approval Was Needed.

105. Bank of America services securitized mortgages⁹ according to the terms of a pooling and servicing agreement ("PSA") between the Bank as servicer, the mortgage owner, and the trustee appointed to act on behalf of the investors by the PSA. Many PSAs include provisions on when and how Bank of America may modify borrowers' mortgages.

106. Under some agreements, Bank of America is delegated authority to modify mortgages without any approval from the trustee or investor(s). This authority may be limited to certain types of modifications (e.g., modifications that do not decrease the interest rate or principal) or borrowers (e.g., borrowers who have missed a certain number of payments).

107. In other instances, Bank of America is required to submit each proposed modification to the trustee or investor(s) for approval.

108. Finally, some PSAs do not permit any modifications or prohibit certain types of modifications.

109. Bank of America has informed a number of Arizona consumers that their loan modifications were declined, or that a decision on their modifications had been delayed, because the investors had not approved their modifications.

110. However, the Attorney General has reviewed documents from the trustee for at least one of these PSAs that indicate that: (a) the PSA had delegated authority to Bank of America to offer mortgage modifications without the approval; and (b) the trustee frequently advised Bank of America, in response to inquiries from consumers, that Bank of America did not need its approval to enter into modifications and noted that Bank of America's

⁹ Securitized mortgages are mortgages that have been bundled with other mortgages and transferred into a trust for the purpose of selling interests therein as securities. Persons or entities who purchase those interests are referred to as investors.

1 representations to the contrary were "misinforming" borrowers.

2 **Sample Consumer Complaints: Consumer Fraud Act.**

3 111. The misrepresentations described above were made in connection with the
4 promotion and operation of Bank of America's loss mitigation program. The experiences of
5 just a handful of consumers, which demonstrate Bank of America's typical conduct, are
6 described below.

7 **C.C. (CIC # 10-6406)**

8 112. Bank of America repeatedly advised an Apache Junction couple that it would not
9 foreclose on their home loan while their request for a loan modification was pending.

10 113. The homeowners first applied for a modification in May 2009 because repeated
11 hospitalizations and missed work had caused them to fall behind on their mortgage payments.
12 They engaged a third party firm to assist with the modification.

13 114. In September 2009, the Bank (or its agent or subsidiary) recorded a Notice of
14 Trustee's Sale.

15 115. Through March 2010, the third party firm spoke weekly or daily with Bank of
16 America attempting to expedite a modification. The firm repeatedly re-sent its authorization
17 form and the homeowners' supporting documents and was repeatedly assured that the
18 modification was under review. Sale dates were set and postponed throughout this period.

19 116. On March 17, the day before a scheduled sale date, Bank of America, for the first
20 time, told the third party firm that it had extended a modification offer in November but the
21 homeowners had not returned the agreement and, as a result, the modification review had been
22 cancelled.

23 117. On information and belief, the November modification offer was never received
24 by either the third party firm or the homeowners.

25 118. In addition, during their many conversations with Bank of America before and
26 after the modification offer allegedly was sent, Bank of America repeatedly told the

1 homeowners and their representative only that a review was pending; no Bank of America
2 representative ever mentioned that a modification offer had been extended and not returned.

3 119. Informed of the scheduled sale, the wife went later that day to a local Bank of
4 America branch and was told to return with her documents.

5 120. When she returned the next day, the branch representative made a telephone call
6 and told her "not to worry"; there was a stop on the foreclosure and a loan modification
7 package would arrive the following day.

8 121. The next day, the homeowner learned that her home had been sold the day before.

9 122. Several days later, the Bank sent the homeowners a modification agreement.

10 123. The homeowners accepted the modification agreement, returned it to the Bank,
11 and began paying the modified amount.

12 124. Subsequently, the homeowner repeatedly called Bank of America to check on the
13 status of both the home sale and the modification. For months Bank representatives gave her
14 different information as to whether her home was sold and whether she was in a modification.

15 125. In June, the Bank told her that her house was in foreclosure.

16 126. After the homeowner complained to the Attorney General's Office, the Bank told
17 her in July that it had rescinded the foreclosure and her modification was approved. However,
18 she received no written approval of the loan modification agreement but only modified
19 payment coupons.

20 127. On approximately April 7, 2010, a Cancellation of Notice of Sale was recorded
21 with the Maricopa County Recorder's Office. However, the Bank did not tell the homeowner
22 the sale had been rescinded until July.

23 **S.M.N. (CIC # 09-11304)**

24 128. In September 2008, six months after applying for a modification, a husband and
25 wife in Tucson entered into an agreement with Countrywide to modify their mortgage.

26 129. Although the modification was to be effective October 1, 2008, it still has not

1 gone into effect more than two years later.

2 130. When the couple called Bank of America—repeatedly—to confirm that the
3 modification had been applied to their mortgage, the Bank repeatedly assured them that they
4 had the modification, told them it would take 30 to 90 days for their account to be updated to
5 reflect the modification, and instructed them to continue to make the modified payment.

6 131. In June 2009, Bank of America also wrote to the Attorney General's Office,
7 which had forwarded the couple's complaint, that the account was being updated to reflect the
8 modification and to remove the foreclosure status.

9 132. During the same period of time, Bank of America reported the consumers as
10 delinquent to the credit bureaus and began the foreclosure process, setting a sale date for their
11 home of August 10, 2009.

12 133. Finally, on August 31, 2009, the homeowners received a new modification, but
13 the terms were incorrect and foreclosure and other inappropriate fees had been included. Bank
14 of America told them to ignore the paperwork and promised they would receive a corrected
15 agreement.

16 134. In October 2009, the Bank began returning the consumers' modified payments
17 because they did not represent the total amount due. Apparently, the Bank still had not
18 recognized the agreed-to modification.

19 135. After the Attorney General's Office forwarded this information to Bank of
20 America, the homeowners received a new letter stating that Bank of America was "pleased to
21 inform" them that their account was being reviewed and they would be considered for a loan
22 modification.

23 136. When, by March 10, 2010, the Bank still had not agreed to honor the original
24 modification, which the consumers continued to honor, the consumers filed suit in Pima County
25 Superior Court for breach of contract, among other claims.

26 137. After the lawsuit was filed, Bank of America finally offered the homeowners the

1 modification they had agreed to two and a half years earlier and removed the negative reporting
2 to the credit bureaus.

3 **D.F. (CIC # 09-28680)**

4 138. When her income dropped, a Phoenix homeowner began contacting Bank of
5 America in February 2009 to request a loan modification.

6 139. Each time she called, she was told that she would not be considered for a
7 modification while she was current on her mortgage.

8 140. In July 2009, when the homeowner was no longer able to make her full mortgage
9 payments, she submitted the documents to start the application process.

10 141. When the homeowner had not heard from Bank of America by August, she
11 attended a fair sponsored by the federal Department of Housing and Urban Development,
12 where she met with a Bank of America representative. She completed another application at
13 the fair because the representative told her it would accelerate the process.

14 142. The homeowner called Bank of America in September 2009 and a Bank
15 representative told her that her request was being reviewed and she would be contacted when
16 the review was complete. When she called again in October, she was told that the review
17 would be finished by October 30, 2009.

18 143. On October 20, a new Bank of America negotiator contacted her and told her she
19 did not qualify for a modification, though she gave no reason. The negotiator told the
20 homeowner she would be eligible only for a forbearance of her mortgage payments. The
21 homeowner asked for time to consider the alternatives and called the negotiator a week later.

22 144. When the homeowner called back, the negotiator told her that, according to the
23 negotiator's manager, the homeowner was "pre-qualified" for a HAMP modification and
24 quoted her a new payment amount. The negotiator explained the program and promised the
25 homeowner she would receive paperwork in the next two weeks and her first payment would be
26 due December 1.

1 145. When the paperwork did not arrive in two weeks, the homeowner twice called the
2 Bank and Bank representatives assured her she had been approved and the documents were on
3 the way, but were merely slowed by a backlog and the holidays.

4 146. The homeowner then received a letter from ReconTrust dated November 13, 2009
5 informing her that her account had been referred to its office to begin the foreclosure process.

6 147. She immediately called Bank of America and was told that she had received the
7 notice because of "coding" in the system and that the Bank would not foreclose on her home.

8 148. Four days later, she received a Notice of Trustee's Sale, which set an auction date
9 of February 15, 2010.

10 149. Bank of America sent the homeowner a notice dated November 23, 2009 stating
11 that it did "not have a modification program available which [she] could qualify for, because;
12 [sic] [her] loan being current."

13 150. The homeowner continued to call Bank of America and was told the modification
14 documents would come soon and, at Bank of America's suggestion, she made her first trial
15 payment.

16 151. In mid-December, the Bank told the homeowner that her request was now being
17 reviewed again, and it could take another 30 to 90 days to get a decision. The Bank
18 representative could not explain why her request was being reviewed again.

19 152. On January 26, 2010, three months after she was told the paperwork was en route,
20 the homeowner received her loan modification agreement, which she signed and returned,
21 along with the requested documents.

22 153. When she called Bank of America to confirm receipt of her documents, a Bank
23 representative told her that her foreclosure sale date had been postponed to April 15, 2010. She
24 continued to make her trial payments and to check in regularly with Bank of America.

25 154. The homeowner's description of what followed echoes the stories told by
26 numerous Bank of America consumers:

1 On April 12, 2010, I was contacted by [named Bank of America
2 representative] who told me that he was reviewing my MHA [modification]
3 documents and he needed additional paperwork. Once again, I faxed this
4 additional paperwork to him again on April 16, and then called him to let
5 him know I had faxed the paperwork. I asked for a return call to verify he
6 received the paperwork. He did not return my call. On April 20, [name]
7 called me to ask if I faxed over the paperwork and I confirmed I did. He
8 said he did not receive it and requested that I re-send the paperwork again
9 to another fax number. Frustrated, I did this again and told him to call me
10 as soon as he received it. [Name] called me back as I was re-faxing the
11 paperwork and then told me that he cannot help me and that I was sent to
12 the wrong department . . . and that I should call the MHA dept directly at
13 [number]. I called the MHA Dept and they did not have my account # on
14 file and said they did not have my paperwork, this started a series
15 transferring me around to different departments. I was finally transferred to
16 [name] at the Office of the president [sic] and she said my account was
17 assigned to [another name]. She would not transfer me to [name] and she
18 sent her an e-mail to have [name] call me back to discuss the status of the
19 MHA and that I would receive a call within 24-48 hours. I asked for
20 [name's] direct phone number but [name] would not give it to me and said
21 if [name] did not call me within 24-48 hours that I should call the Office of
22 the president back and request the phone number. I never received a phone
23 call from [name.]

155. In correspondence dated April 30, 2010, after the Attorney General's Office
16 forwarded the homeowner's complaint, Bank of America confirmed that the homeowner had
17 completed her trial modification and had been approved for a permanent modification on April
18 14. The letter promised that the paperwork would be sent in 30 to 60 days.

156. The homeowner then checked the ReconTrust website and found that her home
19 was scheduled for a trustee's sale on May 13, 2010.

157. When she called about this, a Bank of America representative told her that it
20 takes time to get homes removed from the list.

158. In July, Bank of America's Regulatory Relationship Team wrote her noting that
21 the foreclosure had been suspended and her loan was in review for a permanent modification.

159. In August 2010, Bank of America sent the homeowner another letter stating,
22

1 "Bank of America regrets that you were informed that your loan was approved for a
2 modification. The April 20, 2010 letter you received was most likely referring to our
3 underwriter's approval which precedes the approval by the investor." The letter went on to say
4 that the modification review was "pending approval from the loan's investor." The letter also
5 stated that no sale date would be scheduled while the modification was in review.

6 160. On information and belief, the homeowner's loan was owned by Fannie Mae.
7 Bank of America had authority to evaluate and modify the mortgage under HAMP (for which
8 the consumer's loan apparently was being considered) without Fannie Mae's approval.

9 161. In September 2010, the homeowner received a Notice of Intent to Accelerate.

10 162. In October, she received a letter from the Comptroller of the Currency in response
11 to a complaint she had filed in December 2009. The letter indicated that Bank of America was
12 unable to qualify her for a modification due to her income; however, she had never received a
13 denial from Bank of America.

14 163. On information and belief, to date, Bank of America has never notified the
15 homeowner that her application for a HAMP modification was denied.

16 164. Bank of America sent the homeowner a Notice dated October 6, 2010, which
17 stated that she had completed her commitment under the six-month Special Forbearance
18 Agreement and was "now up to date and current on [her] home loan payments."

19 165. The homeowner was never in a Special Forbearance Plan, however; she was in a
20 three-month HAMP trial plan offered January 20, 2010, which she had accepted and on which
21 she had been paying faithfully for nine months.

22 166. Subsequently, the Bank began refusing to accept the homeowner's modified
23 payments. The Bank told her that she could re-apply for a modification if she resumed making
24 her full mortgage payments.

25 167. Because Bank of America would not accept the modified payments, because the
26 homeowner still could not afford the full mortgage payments, and because she could not face

1 the stress of going through another modification review after waiting for a decision for over a
2 year, the homeowner stopped making her mortgage payments on October 1, 2010 and did not
3 re-apply for a modification.

4 168. Her home was scheduled for trustee's sale on December 14, 2010.

5 169. On November 6, 2010, Bank of America finally offered the homeowner a
6 permanent modification.

7 **F.W. (CIC # 10-1656)**

8 170. An elderly homeowner in Mesa applied for a modification with Countrywide in
9 or about April 2009. When the Bank indicated it had not received the application, she faxed it
10 again in mid-June and again in mid-July.

11 171. In August 2009, a Bank representative told the homeowner her modification
12 request was in review and it could take up to 90 to 120 days for a decision. In September, the
13 Bank asked for updated information, which she submitted.

14 172. Then Bank of America sent her a Notice of Trustee's Sale setting a sale date of
15 December 15, 2009.

16 173. On October 12, 2009, a Bank representative informed the homeowner that a trial
17 modification had been approved effective November 1, 2009.

18 174. The homeowner made her first trial payment. On October 21, the homeowner's
19 representative contacted the Bank and the Bank representative told her that the modification
20 documents could take up to 60 to 90 days to arrive and advised her to check back every couple
21 of weeks.

22 175. During one of the status calls in early November, Bank of America reported that
23 the homeowner's "file was cancelled" on September 1 because of missing documents, despite
24 the Bank's previous representation that a modification had been approved.

25 176. The homeowner's representative submitted her documents to the Bank, again.

26 177. In mid-November and early December, the Bank promised that the modification

1 request was again in review and confirmed that it had the homeowner's trial payment and her
2 documents. Bank of America advised the homeowner to make another trial payment to
3 postpone the December foreclosure, which she did.

4 178. On December 8, Bank of America decided not to postpone the foreclosure,
5 although it did not notify the homeowner. Her home was sold on December 14, 2009.

6 179. Two days after the sale, Bank of America sent the homeowner a letter approving
7 a trial modification, but the homeowner had already left her home. In February 2010, a
8 judgment was entered against the homeowner ordering her to deliver possession of the
9 property, which she already had done.

10 180. In or about October 2010, a Bank of America representative called the
11 homeowner to ask why she was not making her mortgage payments and threatened that the
12 Bank would foreclose if she did not pay.

13 **S. and P. A. (CIC #10-11578)**

14 181. Faced with a reduction in income and increased medical expenses, these
15 homeowners applied for a loan modification from Countrywide in or about February 2009.

16 182. In June 2009 Bank of America offered them a trial modification plan reducing
17 their payments to \$1,910.51. Since this amount was greater than 31% of their income, the
18 ceiling for a HAMP modification, they did not accept the offer.

19 183. On July 3, 2009, Bank of America sent the homeowners a second trial
20 modification plan, reducing their monthly payments to \$1,782.50, 31% of their income. The
21 homeowners called Bank of America and a representative advised them to ignore the first offer
22 and to sign and submit the second agreement. They followed these instructions and began
23 paying the trial payment amount of \$1,782.50 per month.

24 184. In January 2010, after the homeowners had made five timely trial payments, Bank
25 of America sent them a letter notifying them that they had not been making the payments of
26 \$1,910.51 and were therefore at risk of losing their eligibility for a permanent modification.

1 185. The homeowners explained via certified letter that they had paid, as instructed,
2 pursuant to the second trial plan.

3 186. Bank of America did not respond to the homeowners' letter. Despite multiple
4 calls to Bank of America and through the federal HOPE hotline, the homeowners were never
5 able to reach anyone who could help.

6 187. In May, Bank of America sent the homeowners a letter denying their request for
7 modification for the same reason given in the January letter.

8 188. The homeowners called their assigned point of contact at the Bank throughout
9 June and July. On June 18, that contact told them their permanent modification had been
10 approved and they should receive the final paperwork in 30 days.

11 189. On July 7, 2010, Bank of America explained in a letter to the homeowners that
12 the earlier denials had been sent in error, confirmed that the trial payments had been received
13 every month, and reassured them that the loan was "under review for a permanent loan
14 modification . . . [and] has been escalated for expedited processing."

15 190. On July 22, a new point of contact from the Bank called them and said the
16 permanent modification paperwork should arrive in 45 to 60 days.

17 191. In a July 27, 2010 letter, however, the Bank told the homeowners that their
18 modification documents had not been received and thus a workout plan would not be offered.

19 192. Bank of America's next letter, dated August 7, 2010, told the homeowners to
20 disregard the July 27 letter and promised that the homeowners should receive "the permanent
21 modification packet with [sic] the next 7 to 10 business days."

22 193. Instead, the Bank sent the homeowners a Notice of Intent to Accelerate dated
23 August 18, 2010, demanding payment of \$15,862.28 by September 17, 2010 or "foreclosure
24 proceedings will be initiated."

25 194. Finally, Bank of America offered the homeowners a permanent modification,
26 which they accepted on or about August 24, 2010.

1 195. The homeowners had been on a trial modification for more than 12 months before
2 they were offered a permanent modification.

3 **COUNT I – VIOLATIONS OF THE CONSENT JUDGMENT**

4 196. The State re-alleges all preceding paragraphs in their entirety.

5 197. The Consumer Fraud Act provides that:

6 A person who violates any order or injunction issued pursuant to this article
7 shall forfeit and pay to the general fund of the state of Arizona a civil penalty of
8 not more than twenty-five thousand dollars per violation.

9 A.R.S. § 44-1532 (“Violation of order or injunction; penalty”).

10 198. As alleged herein, Bank of America has violated multiple provisions of the
11 Consent Judgment approved by the Court on March 13, 2009.

12 199. Bank of America’s violations of the Consent Judgment have been material.

13 200. Pursuant to Paragraph 10.4 of the Consent Judgment, on April 9, 2010, the State
14 gave written notice to the Countrywide Defendants and Bank of America of their violations of
15 the Consent Judgment and advised them that if such violations were not cured, then the State
16 intended to seek enforcement of the Consent Judgment.

17 201. By letter dated June 4, 2010, and multiple subsequent communications, Bank of
18 America responded by contending that the State had failed to identify any material violations of
19 the Consent Judgment.

20 202. As of the date of filing this Complaint, the Countrywide Defendants and Bank of
21 America have not cured their violations of the Consent Judgment.

22 **COUNT II – VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT**

23 203. The State re-alleges all preceding paragraphs in their entirety.

24 204. A.R.S. § 44-1522(A) of the Consumer Fraud Act provides:

25 The act, use, or employment by any person of any deception,
26 deceptive act or practice, fraud, false pretense, false promise,
misrepresentation, or concealment, suppression or omission of any material
fact with intent that others rely upon such concealment, suppression or

1 omission, in connection with the sale or advertisement of any merchandise
2 whether or not any person has in fact been misled, deceived, or damaged
3 thereby, is declared to be an unlawful practice.

4 205. As alleged herein, the Defendants engaged in unlawful practices in violation of
5 the Consumer Fraud Act, A.R.S. §§ 44-1521, *et seq.*, in that they made false promises and used
6 deception, deceptive practices, and/or misrepresentations in connection with the sale or
7 advertisement of modified mortgage loans and other loss mitigation options.

8 206. In all matters alleged herein, the Defendants acted willfully in violation of A.R.S.
9 § 44-1531(A).

10 **RELIEF REQUESTED**

11 **WHEREFORE**, the State respectfully requests that the Court:

12 1. Hold Defendants in contempt and order them to comply immediately with all
13 provisions of the Consent Judgment pursuant to Paragraph III.10.4 of the Consent Judgment.

14 2. Order Defendants to pay restitution to consumers pursuant to A.R.S. § 44-1528
15 and Paragraph III.10.4 of the Consent Judgment.

16 3. Extend the Termination Date established in the Consent Judgment and impose
17 additional reporting requirements to allow the State to evaluate Defendants' compliance.

18 4. Require Defendants to pay a \$25,000 penalty for each violation of the Consent
19 Judgment pursuant to A.R.S. § 44-1532.

20 5. Prohibit Defendants from violating the Arizona Consumer Fraud Act, A.R.S.
21 §§ 44-1521, *et seq.* as written now or amended in the future.

22 6. Prohibit Defendants from engaging in the course of conduct alleged herein as
23 violating A.R.S. § 44-1522(A).

24 7. Order Defendants to pay restitution to consumers injured by their unlawful
25 practices.

26 8. Order Defendants to pay the State civil penalties of up to \$10,000 per willful


1 violation of the Consumer Fraud Act pursuant to A.R.S. § 44-1531.

2 9. Order Defendants to pay the State's costs of investigation and reasonable
3 attorney's fees pursuant to A.R.S. § 44-1534.

4 10. Order such other and further relief as the Court may deem just and proper.

5 DATED this 17th day of December, 2010.

6
7 TERRY GODDARD
8 ATTORNEY GENERAL

9 By 
10 Susan P. Segal
11 Carolyn R. Matthews
12 Assistant Attorneys General
13 Attorneys for Plaintiff
14
15
16
17
18
19
20
21
22
23
24
25
26